THE MARK O. HATFIELD

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A Summary of Topical Highlights from decisions of the U.S. District Court for the District of Oregon
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Protective Order

Defendants sought a Protective Order requiring plaintiffs to comply with the provisions of 5 CFR § 5.41 , relating to discovery requested from the Department of Homeland Security (DHS).

Judge Stewart ruled that defendants cannot force plaintiffs or the court to comply with DHS's regulations which allow DHS to delay discovery to complete that internal review process or to decline to comply with the court's ruling. Instead, defendants, as any other private litigants, are required to comply with the Federal Rules of Civil Procedure. Magistrate Judge Stewart also concluded that the Privacy Act cannot be used to block the normal course of court-ordered discovery.

Because the blanket protective order requested by defendants did not satisfy the good cause requirement of FRCP 26©), defendants' motion was denied.

Wong v. Beebe CV 01-718-ST
(Order, October 28, 2004)
(Affirmed by Judge Robert Jones, December 20, 2004)
Plaintiff's Counsel: Beth Ann Creighton
Defense Counsel: Anne Murphy

Motion Vacate or Correct Sentence

Petitioner moved to vacate his sentence based on Blakely v. Washington and an ineffective assistance of counsel claim. The court found that petitioner is not entitled to an order vacating his sentence based on Apprendi and/or Blakely, and accordingly, petitioner's Sixth Amendment right to trial by jury was not violated. Finally, petitioner's request for an evidentiary hearing was denied.
USA v. Cedillo, CR 01-416-BR (CV 04-591-BR)
(Opinion, Jan. 12, 2005)
Petitioner's Counsel: Appearing Pro Se
Respondent's Counsel: John Haub

Judge Haggerty denied petitioner's motion to amend, correct, or modify his sentence. The petitioner argued that his sentence was unconstitutional under the rule pronounced in Blakey v. Washington. The court rejected this argument, holding that Blakely did not apply retroactively and that because petitioner's sentence was legal when it was imposed, his reliance on Blakely was without merit. Moreover, even if Blakely were to be applied retroactively, the Supreme Court's recent decisions in United States v. Booker and United States v. Fanfan would not help petitioner because the sentence imposed was within the statutory maximum.
Sanders v. USA, CR03-422-HA (CV04-1300-HA)
(Opinion, Jan. 25, 2005)
Petitioner's Counsel: Christopher Schatz
Respondent's Counsel: Thomas Edmonds

Service of Process

Plaintiff filed an action against the City of Portland and

other defendants seeking relief for violations of his federal constitutional rights under 42 U.S.C. 1983. Defendants moved to dismiss pursuant to Fed. R. Civ. P. 12(b)(4), (5) for failure to effect proper service.

Judge Aiken denied defendants' motion to dismiss finding that because plaintiff properly served his complaint and summons within 120 days, it is timely.

Sorenson v. City of Portland, CV 04-1159-AA
(Opinion, March 4, 2005)
Plaintiff's Counsel: Leonard Berman
Defendants' Counsel: William Manlove

Plaintiff brought six claims against her former employer, all based on three central allegations: (1) defendant agreed to pay her a bonus or "deferred wages" in 2001 and failed to do so; (2) defendant failed to pay her for overtime work that she incurred by working during her lunch break; and (3) defendant failed to enroll her in its employer-paid health insurance plan. Defendant moved for summary judgment on all claims. Based on plaintiff's concession, Judge Hubel granted the motion as to the overtime claims, but denied the motion in all other respects. Judge Hubel rejected defendant's argument that any claims accruing before an earlier bankruptcy discharge must be dismissed under the doctrine of judicial estoppel because plaintiff failed to list them on her asset schedules. Judge Hubel determined that the claims at issue in the case accrued after the bankruptcy filings and thus, judicial estoppel did not apply. Judge Hubel also rejected defendant's argument that a promise to pay a bonus in the future is not enforceable under a terminable-at-will employment contract. Defendant relied on a single case from Georgia while controlling Oregon law suggested that an employer may, under certain circumstances, make an enforceable promise to pay a bonus to an at-will employee. Defendant's remaining summary judgment arguments were rejected because the court concluded there were disputed issues of material fact.

Donahoo v. Meadowbrook
CV 03-1687-HU
(Opinion, Dec. 8, 2004)
Plaintiff's Counsel: Kerry Smith
Defendant's Counsel: Mark Griffin

ENVIRONMENT

Judge Jones granted plaintiffs' motion for summary judgment and denied defendants' motion for summary judgment in a case concerning the Fish & Wildlife Service's proposed down-listing of the gray wolf from an endangered species to threatened status. Judge Jones held that it is internally inconsistent to assert that the gray wolf population is recovering based on currently populated areas when the Endangered Species Act requires evaluation of historically populated areas where gray wolves are now extinct.

The Fish & Wildlife Service failed to explain why it was reasonable to conclude that the nonexistence of the gray wolf in viable habitat within its historical range does not warn of the gray wolf's danger for extinction.

The current proposed state recovery plan for the gray wolf in Oregon that anticipates wolf packs in Eastern and Western Oregon and compensation to cattlemen for any future loss of livestock to wolves was not at issue in this case.

Defenders of Wildlife; et al. v. Secretary, United States Department of the Interior; et al., CV 03-1348-JO
(Opinion, Jan. 31, 2005)
Plaintiffs' Counsel: Anne E. Mahle
Defendants' Counsel: Kristen L. Gustafson